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S.J. Res. 1 — Balanced Budget Constitutional Amendment

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Reported by the Committee on the Judiciary without amendment on January 23, 1995, by a vote of 15-to-3. Ten Republicans and 5 Democrats voted for the resolution; three Democrats voted against it. The Committee's report is to be filed by 8 p.m. tonight.

NOTEWORTHY

- S.J. Res. 1 is virtually identical to the bicameral consensus proposal that has emerged in recent years. The Senate last voted on a balanced budget constitutional amendment on March 1, 1994. The amendment failed by 4 votes (63-37).
- The House of Representatives will begin debate tomorrow on a balanced budget constitutional amendment (H.J. Res. 1), subject to a rule being granted. The Rules Committee is expected to report sometime today.
- S.J. Res. 1 does *not* require a three-fifths vote to raise taxes; it requires a "majority of the whole number of each House by a rollcall vote." This issue is a major point of debate among Republicans, and will be the key vote on the House floor.
- Article V of the Constitution reads in relevant part, "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution . . . which . . . shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States. . . ." S.J. Res. 1 gives the States seven years to ratify.
- The President has no formal role in the amendment process.
- Amendments to a proposed constitutional amendment can be adopted by a simple majority vote; only on final passage is the two-thirds majority necessary.

BILL PROVISIONS

SENATE JOINT RESOLUTION 1, ANNOTATED (as ordered reported from the Committee on the Judiciary, January 18, 1995)

The provisions of S.J. Res. 1, as ordered reported on January 18, 1995, are in the left column. In the right column are explanations of the resolution that are taken from a draft of the Judiciary Committee's report. These explanations are virtually identical to those that were in the year's report, S. Rept. No. 103-163.

"Article -- "Section 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

A balanced budget is to be the "fiscal norm." Congress is expected to use "its full range of legislative powers" to reach and maintain the norm. Outlays may exceed receipts only if at least 60 Senators and at least 261 Representatives approve a "specific excess" by rollcall vote. (Those numbers will change if the size of the Senate or the House changes or if there are vacancies in either House.) "Nothing in this section either anticipates or requires any alteration in the balance of powers between the legislative and executive branches."

"Section 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

The waiver that is authorized by Section 2 and the waiver that is authorized by Section 1 can be combined into one piece of legislation which can be passed with a single vote of three-fifths of the whole number of each House. By requiring a super-majority to approve an increase in the debt limit, Section 2 is designed to help enforce the balanced budget standard. "[W]henever the Government exceeds the debt ceiling, it runs a theoretical risk of default, a powerful incentive for balancing the budget."

"Section 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

The President is required to propose a budget that is balanced, using "good faith . . . with respect to projected economic factors." This "section is not intended to grant the President formal authority or power over budget legislation or spending."

"Section 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

This section "improves congressional accountability for revenue measures." A bill to increase revenues will require the votes of at least 51 Senators and at least 218 Representatives. (Those numbers will change if the size of the Senate or the House changes or if there are vacancies in either House.) The report does not say if the vote of the Vice President of the United States cast to break a 50-50 tie vote of Senators is sufficient to meet the requirements of the amendment.

"Section 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

The first sentence of Section 5 refers to a formal declaration of war. If Congress has declared war, the requirements of this article of amendment may be waived by a concurrent resolution, i.e., a resolution that does not require the consent of the President, adopted by simple majorities in each House. The second sentence of Section 5 permits a waiver when the country is engaged in "urgent national security crises." The joint resolution that is authorized here must be adopted by "a majority of the whole number of each House of Congress" (not a simple majority of a quorum) and then must become law.

"Section 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

This "provision precludes any interpretation of the amendment that would result in a shift in the balance of powers among the branches of government". This section recognizes the need for implementing legislation in an area as vast and complicated as the federal budget process, and further recognizes that Congress will have to use estimates. "'Estimates' means good faith, responsible, and reasonable estimates made with honest intent to implement section 1, and not [to] evade it." In the implementing legislation, Congress could decide that a "temporary, self-correcting drop in receipts" or a "small" or "negligible" shortfall "would not represent a violation of section 1." Additionally, Congress "can require that any shortfall must be made up during the following fiscal year."

"Section 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal."

"[T]otal receipts' is intended to include all moneys received by the Treasury of the United States, either directly or indirectly through Federal or quasi-Federal agencies created under the authority of acts of Congress, except those derived from borrowing. In present usage, 'receipts' is intended to be synonymous with the definition of 'budget receipts', which are not meant to include offsetting collections or refunds." "Contributions to social insurance programs . . . should be included in receipts." "[T]otal outlays' is intended to include all disbursements from the Treasury of the United States, either directly or indirectly through Federal or quasi-Federal agencies created under the authority of acts of Congress, and either 'on-budget' or 'off-budget', except those for repayment of debt principal."

Although the definitions in Section 7 are broad, some Federal programs are not intended to be covered. For example, the Committee said that the Tennessee Valley Authority is "[a]mong the Federal programs that would not be covered by S.J. Res. 1 . . ."

"Section 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later."

An article of amendment to the Constitution of the United States is ratified and becomes a part of the Constitution when the "three-quartereth" State (38th of 50) approves it. No additional act is necessary. See *Dillon v. Gloss*, 256 U.S. 368, 376 (1921).

BACKGROUND

Recent Congressional History of Balanced Budget Amendments

The Senate adopted a balanced budget constitutional amendment on August 4, 1982, by vote of 69-to-31 (S.J. Res. 58 of the 97th Congress). Forty-seven Republicans and 22 Democrats voted for the amendment; seven Republicans and 24 Democrats voted against it. The Senate proposal was not voted on in the House, but the House did vote on H.J. Res. 350 in 1982, failing to obtain the necessary two-thirds majority.

On March 25, 1986, the Senate failed by one vote to adopt a balanced budget constitutional amendment (S.J. Res. 225 of the 99th Congress). Forty-three Republicans and 23 Democrats voted for the proposal; 10 Republicans and 24 Democrats voted against it.

On July 17, 1990, the House of Representatives voted on a balanced budget constitutional amendment, but the House fell a few votes short of the necessary two-thirds (H.J. Res. 268).

On June 9, 1992, the House of Representatives again narrowly failed to reach the necessary two-thirds majority.

The Senate failed to obtain cloture on a balanced budget amendment on June 30, 1992, and again on July 1, 1992. In each case, the vote was 56 (41 Republicans and 15 Democrats) to 39 (no Republicans and 39 Democrats). (Also, on April 9, 1992, the Senate waived the Budget Act with respect to a sense of the Senate resolution that called on the Senate to adopt a balanced budget amendment.)

On March 1, 1994, the Senate failed by four votes to adopt a balanced budget constitutional amendment (S.J. Res. 41 of the 103rd Congress). Forty-one Republicans and 22 Democrats voted for the proposal; 3 Republicans and 34 Democrats voted against it.

On March 17, 1994, the House of Representatives again failed to obtain the two-thirds majority necessary for passage (H.J. Res. 103).

COST

In a letter of January 19, 1995, the Congressional Budget Office said:

"The budgetary impact of this amendment is very uncertain, because it depends on when it takes effect and the extent to which the Congress would exercise the discretion provided by the amendment to approve budget deficits. . . ."

"According to CBO's latest projections of a baseline that assumes inflation adjustments for discretionary spending after 1998, some combination of spending cuts and tax increases totaling \$322 billion in 2002 would be needed to eliminate the deficit in that year. . . ."

"Over the entire 1996-2002 period, the savings in CBO's illustrative path that result directly from policy changes total more than \$1 trillion (in relation to a baseline that includes an inflation adjustment for discretionary spending after 1998). Savings from policy changes, measured relative to a baseline with discretionary spending frozen after 1998, would be about \$200 billion less. The required savings from policy changes would be smaller, and the debt service savings would be greater, if, as we would anticipate, ongoing deficit reduction efforts over this period were to result in lower interest rates. . . ."

"Enactment of this legislation would not directly affect the budgets of state and local governments. However, steps to reduce the deficit so as to meet the requirements of this amendment could include cuts in federal grants to states, a smaller federal contribution towards shared programs or projects, an increased demand for state and local programs to compensate for reductions in federal programs, and/or an increase in federal mandates imposed on states or localities. . . ."

ADMINISTRATION POSITION

No formal Statement of Administration Policy was available at press time. However, President Clinton is opposed to a balanced budget constitutional amendment. In a letter to then-Majority Leader Mitchell dated November 5, 1993, the President said, "I write to express my firm opposition to the proposed balanced budget amendment to the Constitution of the United States. . . . While I am deeply committed to bringing down our Nation's deficit, this proposed balanced budget amendment would not serve that end. It would promote political gridlock and would endanger our economic recovery."

In testimony before the Senate Judiciary Committee on January 5, 1995, OMB Director Alice M. Rivlin, said, "...The Administration continues to oppose the effort to write fiscal policy into the Constitution. The Constitution should establish principles that are basic and necessary in all times -- not fiscal policies (like a balanced budget) that may not be appropriate in every year, under every condition. In short, this proposal is bad economic policy and bad constitutional policy."

OTHER VIEWS

When this *Legislative Notice* was written, minority views were unavailable because the committee report had not been printed.

National Party Platforms

1980

Republican: "[I]f necessary, the Republican Party will seek to adopt a Constitutional amendment to limit federal spending and balance the budget, except in time of national emergency as determined by a two-thirds vote of Congress." [1980 *CQ Almanac*, page 75-B, col. 1.]

Democrat: "We oppose a Constitutional amendment requiring a balanced budget." [1980 *CQ Almanac*, page 92-B, col. 3.]

1984

Republican: "We will work for the constitutional amendment requiring a balanced federal budget passed by the Republican Senate but blocked by the Democrat-controlled House and denounced by the Democrat Platform." [1984 *CQ Almanac*, page 43-B, col. 1.]

Democrat: We oppose the artificial and rigid Constitutional restraint of a balanced budget amendment." [1984 *CQ Almanac*, page 78-B, col. 1.]

1988

Republican: "We call for a balanced budget amendment to the Constitution." [1988 *CQ Almanac*, page 50-A, col. 2.]

Democrat: no reference found

1992

Republican: "Republicans vigorously support a balanced budget, a balanced-budget constitutional amendment and a line-item veto for the president." [1992 *CQ Almanac*, page 90-A, col. 2. (See also, page 86-A, col. 1.)]

Democrat: no reference found

ENFORCING THE AMENDMENT

"S.J. Res. 1 contains the flexibility that an amendment to the Constitution must have. It does not prescribe a particular mechanism that Congress must employ in order to achieve a balanced budget. Instead it leaves political decisions to the political system. The amendment is, however, self-enforcing. Because, historically, it has been easier for Congress to raise the debt ceiling, rather than reduce spending or raise taxes, the primary enforcement mechanism of S.J. Res. 1 is section 2, which requires a three-fifths vote to increase the debt ceiling.

"The amendment contemplates that Congress will execute its responsibilities under the amendment through the exercise of its currently existing authority. The Constitution already empowers Congress with such authority. Section 8 of Article I grants Congress the power '[t]o make all Laws which shall be necessary and proper. * * * Furthermore,

Members of Congress are required by Article VI generally to 'support this Constitution' while the President is required by Article II, section 1, clause 7, to 'preserve, protect, and defend the Constitution.'

"The committee expects fidelity to the Constitution, as does the American public. Both the President and Members of Congress swear an oath to uphold the Constitution, including any amendments thereto. Honoring this pledge requires respecting the provisions of the proposed amendment. Flagrant disregard of the proposed amendment's clear and simple provisions would constitute nothing less than a betrayal of the public trust. In their campaigns for reelection, elected officials who flout their responsibilities under this amendment will find that the political process will provide the ultimate enforcement mechanism.

"It is the committee's view that: (1) the language and the intent of S.J. Res. 1 are clear; (2) Congress and the President are to abide by this language and intent; and (3) where necessary, Congress is to enact legislation that will better enable the Congress and the President to comply with the language and intent of the amendment."

Following the language just quoted, the Committee's draft report contains a section on judicial enforcement and presidential impoundment.

POSSIBLE AMENDMENTS

No list of proposed amendments is currently available. However, the following amendments were offered and defeated in committee. They are a guide to the amendments that likely will be seen on the Senate floor.

Feinstein amendment to exclude from the operation of the constitutional amendment the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund; tabled in committee by vote of 10-to-8.

Biden amendment to allow a separate budget for major capital investments (up to 10 percent of total outlays) if three-fifths of each House of Congress provides for such separate capital outlays; tabled in committee by vote of 12-to-5.

Feingold amendment to delay referring the proposed amendment to the States until the Congress adopts a statutory budget "glide path" leading to a balanced budget; tabled in committee by vote of 12-to-5.

Kennedy amendment to specify that nothing in the proposed constitutional amendment "shall authorize the President to impound funds . . . or to impose taxes, duties, or fees"; tabled in committee by vote of 11-to-5.

Kennedy amendment to delay referring the proposed amendment to the States until legislation is enacted that "specifies the means for enforcing the provisions" of the balanced budget amendment; tabled in committee by vote of 12-to-5.

Feingold amendment expressing the sense of the Senate that "reducing the Federal deficit should be the highest national economic priority and that enacting a tax cut during the 104th Congress would" *not* be in keeping with that priority; withdrawn without a vote.

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